

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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IN RE PHARMACEUTICAL INDUSTRY : MDL 1456  
AVERAGE WHOLESALE PRICE :  
LITIGATION, :  
\_\_\_\_\_ : Master File No. 01-CV-12257-PBS  
THIS DOCUMENT RELATES TO: :  
ALL ACTIONS :  
: Judge Patti B. Saris  
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**AFFIDAVIT OF ALIA L. SMITH IN SUPPORT OF EMERGENCY MOTION FOR  
EXTENSION OF TIME TO FILE OBJECTIONS TO MAGISTRATE'S ORDER**

STATE OF NEW YORK )  
 ) ss.  
COUNTY OF NEW YORK )

ALIA L. SMITH, being duly sworn, deposes and says:


1. I am an attorney duly admitted to the Bar of the State of New York, and am associated with the law firm Levine Sullivan Koch & Schulz, LLP, counsel to the Non-parties First DataBank, Inc. and Patricia Kay Morgan (collectively "FDB"). I submit this affidavit in support of their emergency motion, pursuant to Rule 2(b) of the Magistrate Rules for the District of Massachusetts, for an order extending the time by which they may file their objections to Magistrate Judge Bowler's order delivered from the bench on September 27, 2004.

2. Rule 2(b) provides that objections to a magistrate judge's order must be filed "within 10 days of being served with a copy of that order *unless a different time is prescribed by the magistrate judge or a district judge.*" In this case, Magistrate Judge Bowler did not draft a written order, but instead ruled orally from the bench on September 27, 2004. If the ten-day time period for filing objections is calculated from that date, the objections would be due Tuesday,

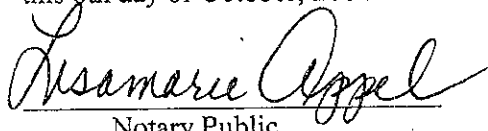
October 12. However, the transcript of the hearing held on September 27, is not yet available, even though it was promptly requested. Without a transcript, this Court would be unable to evaluate fully the magistrate judge's basis for ruling. Indeed, Rule 72(a) of the Federal Rules of Civil procedure specifically contemplates review of a written order. *See also* 12 Charles Alan Wright *et al.*, Federal Practice & Procedure § 3069 ("the district court will need a basis in the record" to be able to rule on the objections).

3. Counsel for FDB ordered a copy of the transcript from court reporter Carol Scott on Tuesday, September 28, the day after the hearing. Ms. Scott initially promised that the transcript by Friday, October 1, or on Monday, October 4 at the latest. Since October 4, counsel has continued to call and/or email Ms. Scott every day. Today – one business day before the October 12 deadline given that Monday is a holiday – Ms. Scott indicated that the transcript could not be completed until "sometime next week."

4. Therefore, FDB respectfully requests that the Court order that FDB must file its objections within 10 days of the date that it receives a transcript of the September 27, 2004 hearing.

  
Alia L. Smith

Sworn to and subscribed before me  
this 8th day of October, 2004



Notary Public

LISAMARIE APPEL  
Notary Public, State of New York  
No. 01AP4869703  
Qualified in Richmond County  
Certificate Filed in New York County  
Commission Expires Sept. 2, 2006

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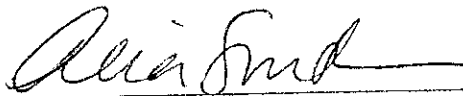
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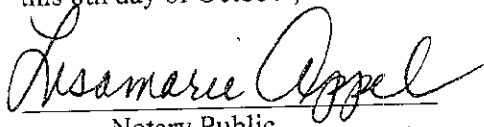
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